

COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE  
INEFFICIENCY IN KHAYELITSHA AND A BREAKDOWN IN RELATIONS  
BETWEEN THE COMMUNITY AND POLICE IN KHAYELITSHA

CLOSING LEGAL ARGUMENT

Complainant Organisations

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Date: 29 MAY 2014

Source: Pages 8060 - 8123 of Commission transcript

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ON RESUMPTION ON 29 MAY 2014: (at 09:00)

COMMISSIONER: Good morning everybody. We have issued a timeframe for argument this morning. Is that suitable to you, Mr Hathorn?

MR HATHORN: We're happy with that, Commissioner. Thank you.

COMMISSIONER: You're happy with the timeframe. Mr Arendse?

MR ARENDSE: No objection.

COMMISSIONER: No objection, okay. Good. DOCS at the back; you're happy with that, are you, Mr Osborn?

MR OSBORN: Yes, indeed. Thank you, Madam Commissioner.

COMMISSIONER: Thank you. Mr Katz?

MR KATZ: No problem.

COMMISSIONER: Good. Thank you. And the Women's Legal Centre have indicated that they won't be making any closing submissions to the Commission. Mr Hathorn, am I – we received your voluminous submissions, are you going to be tendering comments on them?

MR HATHORN: We will read them out, we will read through them.

COMMISSIONER: We're looking forward to that enormously, ...(laughter). Go ahead. Thank you.

MR HATHORN: No. Commissioners, as I was apologising to our colleagues I said that if we had had more time we would have been able to produce something more concise, but unfortunately we were left having to cover a lot of material in a short space of time.

COMMISSIONER: We are grateful to you. It's extremely helpful and it's particularly helpful to have the references into the record. Do go ahead.

SUBMISSION BY MR HATHORN:

Thank you. Commissioners, in terms of the structure of the argument on behalf of the complainant organisations, it is going to be divided in fairly equal parts between myself, Ms Mayosi and Mr Bishop.

In broad terms, I will deal with the operational issues and some introductory comments about the terms of reference. Ms Mayosi will then deal with the questions relating to relationships with the – between SAPS and the community, vigilante action and the FCS unit. And Mr Bishop will deal with intelligence, the questions of resources, HR and oversight and governance. We will focus our submissions on the recommendations that we propose that the Commission should make, and we roughly allocated between ourselves half an hour each.

Before we get to that; there is a question that our clients and a

number of the expert witnesses that we consulted within the course of the second phase have asked us to raise and to get – to request, if not now at least at some point, clarity on the status of the documents. It is clear that the oral evidence is a matter of public record. The statements of the people who gave oral evidence, I think almost without exception, are matters of public record.

But there is a considerable volume of documents which have been made available to the Commission and to the legal representatives and the majority of those clients to our clients as well. But the exact status of these documents is not clear. The academics have told us that as far as research purposes are concerned, this is a treasure trove of documents and will – if they're allowed access to it, it will provide a basis for an enormous amount of research.

And we propose that, unless there is good grounds for not making any of the documents available, then they should form part of the public record and they should be accessible to our clients for the purposes of their campaigns going forward and also to academics for purposes of research and feeding back to improving the effectiveness of policing in the country.

And it's a matter that we don't intend to request the Commission to decide now, but if they could – if the Commissioners could at some point make it clear the extent to which the documentation will be available, and if there are any documents that are not to form part of the record then if those could be identified.

COMMISSIONER: This is something that Advocate Pikoli and I and indeed the commission team have discussed. It is really regulated by the notices. Documents that were admitted without objection as being admitted and not in any sense determined as having any confidentiality attached to them remain in the public domain.

And the Commission will be archiving publicly the materials, the electronic materials, probably in several archives and the actual print materials will almost certainly be archived in the provincial archives. There are some circumstances where there were objections or redactions or whatever, but it will be guided by the rulings that the Commission has made on documents.

And you will be aware that the Commission has issued notices along the way or rulings along the way. People were given a period of time to object to the publication of documents and if there were no objections then they went in to the record before the Commission or in the public domain. Mr Arendse? I mean, that's my – that's been the ruling of the Commission and I understand there haven't been objections from you save where they were specific redactions (?) in relation to some dockets and some redactions.

MR ARENDSE: Ja, I would – we would agree subject only – and obviously we haven't discussed this and applied our minds to it. I do recall though some documents were made available on a confidential basis, whereby it was restricted to the Commission and subsequently at your request you asked that to be extended only to the legal representatives.

COMMISSIONER: Right. We ...(interventio2n).

MR ARENDSE: I can't recall exactly what those documents are, and there may have been one or two others. It constitutes by far the very small number of the documents before the Commission. But we don't – we

would perhaps request also an opportunity to discuss with our clients and just take them through the various notices.

Because just to cover ourselves as legal representatives, I don't also want to subsequently be accused, as it were, of having sought and obtained documents from clients under sort of false pretences or pretending something and then ...(intervention).

COMMISSIONER: You obviously may take instructions, but in fact there's legislative provisions that regulate this in terms of the Western Cape Commissions Act, which make it very exceptions for the Commission to be able to admit information that is not put into the public domain. So, you know, any submissions you make would have to comply with the provisions of the Commissions Act and those drove the provisions in the notices.

And if you will recall, the Commission was quite reluctant to admit evidence and testimony that wasn't going to be in the public domain and one of the reasons for that was the provisions of the Commissions Act; it has got to be shown to be in the public interest that it's not open to the public.

But we will be – it will be one of the things that will be dealt with in the Commission's report and it will be based, unless we get any subsequent application, will be based on the rulings that have been made during the process.

MR ARENDSE: I don't think – the issue for us as legal representatives is more relating to the terms of reference.

COMMISSIONER: To the terms of reference?

MR ARENDSE: It more relates to the terms of reference, where our clients would have initially refused and then maybe had been reluctant and then had been persuaded to make documents available. I think perhaps it's an internal thing and maybe we will just hand up a note to you to be copied to all the other legal representatives, if that would be in order.

COMMISSIONER: Well all I can say is that you need to act very quickly, Mr Arendse because, you know, the deadline for the report is the 11<sup>th</sup> of July and our internal deadline is quite a lot earlier than that. So you will need to act very quickly, because we do intend to deal with this and we intend to deal with it on the basis that it was undisputedly dealt with during the course of the proceedings. So if there is any proposal to amend that, that will need to happen very quickly.

MR ARENDSE: I will hand it to Advocate Pikoli at our next cricket meeting next week.

COMMISSIONER: Okay. Go ahead.

MR HATHORN: Thank you, Commissioner. Commissioner, in terms of the – moving on to the terms of reference. As we read the terms they require the Commission, or the two of you as commissioners, to do three things. Firstly, to investigate the complaints into allegations of inefficiency or a breakdown in relations between the SAPS units stationed at or operating in Khayelitsha and the Khayelitsha community.

And it is clear that although the ambit of the complaints is broader than the activities of the SAPS units, the terms of reference limit the scope of the investigation to SAPS units in regard to the first of the three stages. If the Commission finds that there are inefficiencies or a breakdown then one moves to the second and third stages. The

second ...(intervention).

COMMISSIONER: While we – sorry, just to pause on that because obviously this is crucial. Would it be correct to see the focus of the complaint to be that that is contained para 63 to 67 of the original complaint, that is that there are basically statements saying that the – I mean, I identify in fact 12 specific complaints there, of which the eight individual complaints which are contained in Annexure B are merely exemplars. Is that the correct way to understand that complaint, from your – in your submission?

MR HATHORN: That is correct. I was going to move on to that. In terms of paragraph 4 of the complaint, it is made clear that the complaint relates to systemic inefficiencies and a general breakdown in relations. And they are just put forward as examples, as illustrations of the more general inefficiencies and breakdown.

The second phase is, if there are inefficiencies or a breakdown found to be present then one moves on to the second and third stages. The second stage is to identify the reasons or causes of the breakdown or the inefficiencies. And then the third phase is to make recommendations as to how the problems may be alleviated or remedied. In respect of the second and third stages, our submission is that these are not limited in the same way or to the same extent as the first phase.

And to illustrate that, if it were to be found that SAPS in – the SAPS units in Khayelitsha are not able to operate effectively because of a shortage of personnel or resources caused by decisions made in the head office in Pretoria, it would be in an absurdity to say that the Commission's power to make recommendations with regard to these resource allocation decisions are precluded by their scope of the terms of reference being limited to the unit's operating in Khayelitsha.

And this was implicitly accepted by SAPS by virtue of the fact that Brigadier Rabie came down from Pretoria and he explained how the national resources allocation decisions are made between stations across the country. And there was no argument at that stage that this evidence was irrelevant, that only recommendations pertaining to the functioning of the units in Khayelitsha itself could be accepted.

In a similar fashion, although the Commission disallowed questions tabled by the complainant organisations to the City of Cape Town's witnesses, directed at the basis on which it provides lighting and which they police violations and other issues of a similar nature relating to infrastructural questions, and we as representatives of the complainant organisation accept that the infrastructural decisions made by the City of Cape Town is not the primary focus of this investigation, and we're not proposing that the Commission makes recommendations directly at the City.

However, we do contend that issues like lighting and access to informal settlements form part of the context within which policing operates in Khayelitsha and a very fundamental part of that context. And if the Commission is identifying the reasons for inefficiencies and a breakdown in relations between the police and community members, they can't ignore issues such as lighting in informal settlements, the location of toilets where people in informal settlements are forced to travel at times fairly substantial distances and therefore putting themselves at risk, and also questions like access to informal settlements.

And our submission is that they should be identified as such and in the Commission's report attention drawn to these infrastructural and similar issues. And finally, with regard to the terms of reference, our submission is that it is clear that there are inefficiencies or a breakdown that justify the Commission making, formulating recommendations, identifying the reasons.

It is not submitted by SAPS in their submissions that there is no need to go past the first of the three stages. It was unsurprising that it wasn't; because given the abundance of evidence pointing to inefficiencies and suggesting a breakdown, and given General Lamoer's explicit acknowledgment that he would welcome the recommendations of the Commission and that they would be very helpful to SAPS going forward, it is hardly open to SAPS at this point to contend that the inquiry stops at the first of the three phases.

COMMISSIONER: Just a couple of questions on the constitutional provisions which bare directly on the terms of reference. When the provision says that, "May enquire into complaints of police inefficiency", does that – is that limited to fundamental systemic non-operation or does it mean examples of inefficiency within an overall framework of functional police? I mean, how do you interpret that?

Clearly, in the heads tendered by the South African Police Service they are taking a very specific understanding of inefficiency. What are your submissions on what section 206(5)(a) means when it refers to complaints of police inefficiency?

MR HATHORN: Commissioner, in this instance one – the core of the complaint is the November 2011 complaint submitted by the complainant organisations. There might be a debate – and there was also two supplementary complaints which were submitted by the complainant organisations. As I recall, it was in April and June 2012. One of those was relating to – I think it was the April complaint was directed mainly at the question of evictions conducted by the City of Cape Town's law enforcement unit, which would fall outside the terms of reference of the Commission.

With regard to the issue of the complaints that this Commission is – sorry. There was also – there were other complaints which were – the Premier certainly took into account in appointing the Commission, whether the Commission is required to consider those complaints. There was, attached to the court papers, a complaint by an individual with regard to vigilante action and police conduct and he went on a fast, I think, in support of the issue.

Whether that forms part of the complaints that the Commission is required to consider is not clear. But it actually becomes unimportant when one looks at the breadth of the systemic issues that form the fundamental part of the November 2011 complaint. And it would be certainly be incorporated within the scope of the issues covered by that November 2011 complaint.

COMMISSIONER: The second question is, why – the Constitution talks about a breakdown in the relationship – a breakdown in relations between the police and the community. Firstly, what are your submissions as to what that means and how that would be determined? And secondly, what are your submissions as to why the Constitution is concerned about that and what it must mean for the nature of policing.

MR HATHORN: Commissioner, if I can consider the second aspect and perhaps deal with it in reply; it is not something that I have given particular thought to and don't want to produce a spur of the moment response which would probably be ...(intervention).

COMMISSIONER: It may be the old hat, but I do actually think that we have to pay quite serious attention when the Constitution pulls this out as a key issue as to how it understands what the relationship – what policing is about in our constitutional framework. So I will be grateful for any submissions you have on that. And on the first question?

MR HATHORN: On the first part of it, I would start by setting out what I don't believe that a breakdown. And throughout the evidence of the SAPS' witnesses it was put to them, do you believe that there has been a complete breakdown in relations between the community and the police in Khayelitsha. And in our understanding, that's a misformulation of the issue.

The constitutional text does not require a complete breakdown in relations for a finding that there is a breakdown that is present. The exact nature of – and it's not our submission that there has been a fundamental breakdown in relationships between the police and the community. There has been a substantial breakdown, and if one looks at the extent of vigilante action in Khayelitsha in the past three or four years, our submission would be that that doesn't occur in circumstances where policing is taking place effectively.

If one looks at Professor Steinberg's analysis of the tension between the reduction and crime function of police in visible policing and the order / maintenance functions, he advanced the proposition that people must be placed in a situation where if there is a problem, if there is an incident where a thief gets caught in the streets, that the natural response of the community will be to take that person to the police, not to deal with it themselves.

And our submission is, it is clear from the pattern of evidence that has evolved that people in Khayelitsha do not feel confident that if they take a thief or someone who is caught in the course of a criminal action to the police that it will be dealt with properly. So there is a substantial problem in that regard.

Secondly, if one looks at the statistics available concerning conviction rates and the guilty verdicts that were apparent and led in evidence in the course of the hearings, and what stands out is the evidence of Colonel Tobias, who said that in the first quarter of 2010, of approximately 1 500 – sorry, it's not – but in that period there were approximately 1 500 cases reported at the Harare Police Station and in that period there were five guilty findings; and then a year later it was approximately 1 300 – sorry, it was six guilty findings the first year and the following year it was five guilty findings.

Which means that in the course of each month in those quarters that the Harare Police Station, which employs approximately 160 to 170 police officers, is producing one or two guilty findings a month. It is an absolutely remarkable statistic and a very poor reflection on the effectiveness of policing in that police station.

So that would support the evidence of community witness after community witness who came before this Commission and testified that they had lost confidence in the police. And Mr Welcome Makele said that

he hardly bothered to report matters to the police because he had no confidence that they would be taken seriously.

These two factors that we have referred to are supported by the most objective or comprehensive data that is available to us concerning the community attitudes to the police, and that is the Mtete (?). I am stealing Ms Mayosi's thunder to an extent here, but it's clear from that survey that there is a very substantial loss of confidence in the police amongst the sample of 1 700 residents that were surveyed in that.

So if one looks at all of this evidence, it points to a fundamental problem, a fundamental loss of confidence in the police amongst Khayelitsha residents. So although Mr ...(intervention).

COMMISSIONER: Just on that. I mean, if one talks about a breakdown in relations, it can be – is it really a question of trust? Is that the key focus when there's, you know, a relationship breakdown, or is a question of confidence, or is it a question of whether people actually go to the police station? How do we measure this?

MR HATHORN: Trust in the context of a community is very difficult. But I think one needs to move towards a more objective measure and look at whether people are prepared to actually take their – report matters to the police. And if they are not doing that to a very substantial extent then that would be an indication that there has been a loss of confidence, there has been a breakdown.

And just to come back. Although Mr Arendse will argue that the evidence of the station commanders that they enjoyed good relations with the members in the community who would come and sit in their office and tell them their problems, that evidence wasn't contested.

So we can't attempt to persuade the Commission that there was an absolute and fundamental and complete breakdown and that no one had any confidence in the police and no one was reporting crime. That's obviously not the case. But our submission would be that there has been a fundamental breakdown and that the Commission is – there is ample evidence to justify a finding by the Commission to that effect.

And with regard to the question of the definition of inefficiencies; again similar considerations apply. This is not a matter where one is on the cusp as to whether or not it is debatable as to whether inefficiencies are present or not. The term 'inefficiency' if one looks at the dictionary definition it would be defined in terms of,

“Not achieving maximum productivity, failing to make the best use of time or resources.”

And our submission would be that on a whole range of issues, the allocation of resources, the feedback to complainants, the conviction rates, the guilty findings, amongst – in the Khayelitsha courts and a range of other issues, that there is no question that there are inefficiencies and that the Commission is entitled to and required to make findings and recommendations in that regard.

So although the exact parameters of the term 'inefficiencies' as it is used in section 206(5) might be difficult to pin down with great clarity, our submission would be that however one defines it, 'inefficiency' in the present case, the requirements are going to be satisfied.

Commissioners, I see that I have actually used up my half-hour allocation. Commissioners, I intend taking another 10 minutes and I am just going to cover briefly ...(intervention).

COMMISSIONER: I think go right ahead. Sorry, there has been a lot of injury time on my part. So go right ahead.

MR HATHORN: I just want to cover one or two of the issues, the recommendations relating to visible policing and to the detectives and liaison with the magistrates courts; and I will try and do that as quickly as possible.

Just to – I would like to – with regard to visible policing; at paragraph 58.1 of our written submissions, I would like to correct what is written there. We state,

“We propose that the Commission makes the following recommendations in respect of visible policing; SAPS to ensure that National Instruction 3 of 2009 ...”

It should be 3 of 2013,

“... in relation to sector policing be fully implemented.”

And in relation to paragraph 58.3; with regard to the proposal that,

“Visible policing units conduct ...(intervention).”

MR PIKOLI: Which paragraph? Sorry? Which paragraph?

MR HATHORN: It is 58.3, Commissioner; it's on page 32 of the written submissions. In relation to this submission, SAPS in their heads of argument state that bicycle and quad bike patrols are not possible in Khayelitsha and they make the point that foot patrols are very resource-intensive and cannot take place on a 24-hour basis.

Our submission would be that the submission in the SAPS' heads of argument is not borne out by the evidence even of their own witnesses that we referred to in our submissions; we referred to Commander Leamy's evidence about when he was the commander of the Nyanga Police Station and he would take groups of officers accompanied by neighbourhood patrollers out and patrol. He said it wasn't something that his officers did enthusiastically but once out it proved to be very effective and important in instilling confidence in the police.

And Colonel Raboliba gave evidence that quad bikes were – it was possible to patrol on quad bikes in certain parts of informal settlements and others the spacing was a problem. That was at page 4788 of the record. And Brigadier Dladla said that with the personnel at present available to him that foot patrols were impractical, because one would have to leave the car and walk.

But he did state that if he had more officers available to him that it would be more feasible for him to do so. And he said that foot patrols led to improvements in visible policing. And that was at pages 3505 and 3645. And he also conceded that it was possible to use bicycles during the daytime to control.

And Colonel Reitz's evidence was to the effect that it was not impossible to do foot patrols and it was something that could be done in informal settlements in conjunction with community patrollers and it did make a difference, that crime came down in the areas where they did targeted foot patrols. And that was at page 3020 of his evidence.

With regard to the recommendations in relation to the detectives. There were recommendations made in General Schooling's report at paragraphs 285 to 289, which we didn't explicitly incorporate into the recommendations that we formulated, and we would endorse those recommendations made in those paragraphs. And we would also add that there is much value in the report of Mr Jan Swart. And we would also



broadly support what – his recommendations related more to the FCS units, but we would broadly endorse the approach proposed by Mr Swart.

Finally, with regard to the question of the lost dockets. The SAPS in their submissions state that there is no evidence of lost dockets and suggest that the situation with regard to dockets is under control. In this regard we refer the Commission to the follow-up inspection report of the Harare Station by the provincial inspectorate on the 14<sup>th</sup> of January this year.

In paragraph 3.7 of that report, under the heading “Monthly dockets audits”, it says that the suggestions proposed in the previous inspection report, that was in October 2013, had not been implemented. And it stated further, and more worryingly that,

“2 028 case dockets of DSC personnel were locked away in an office since October 2013. DSC personnel could not account for their cases on hand; see paragraph 4(1) below.”

And in paragraph 4(1) it was stated that,

“It was found that DSC personnel have dockets on hand which are in contravention with the guidelines. Constable Zibanda was interviewed in the DSC and she confirmed that had cases on hand but could not say where they were. CAS function 4.15.1.5.2 indicated that she had 32 cases on hand.”

So if that ...(intervention).

COMMISSIONER: Mr Hathorn, if I could just interrupt you for a minute. Ms Dissel tells me there is problems with the sound interpretation. So if people are struggling, it is trying to be sorted out. But I think we should proceed, if that’s alright, but just to say to people that the sound technicians are trying to improve the sound.

MR HATHORN: Thank you, Commissioners. Constable Zibanda was unable to account for 32 cases which she had on hand. And Captain van der Westhuizen then confirmed that,

“These 2 028 cases were taken in during October 2013 and these cases were not investigated since the members are allocated to the DSC and only deal with new registered cases.

So if one looks at this in context, the context is that in August 2012 the Premier announced the appointment of this Commission of Inquiry into the conduct of these three police stations; that Project 6 was implemented I think, as I recall General Jacobs’ evidence, it was early in 2013. And General Jacobs effectively admitted that the rationale for Project – well at least part of the rationale for Project 6 was to get these three stations’ house in order for purposes of this Commission of Inquiry.

The Harare Police Station had been subjected to an intensive series of inspections in terms of Project 6, it had been inspected in September 2013, there was a follow-up inspection in October 2013, and yet still we find the situation in January this year where over 2 000 dockets have been locked away in a room in accessible since October, and you have got Constable Zibanda – sorry, I shouldn’t have read her name into the public record and request that that be struck from the record.

COMMISSIONER: Yes, that’s fine.

MR HATHORN: But we have a constable who is unable to account for 32 dockets. If those dockets are not lost, well, I would like to know what ... (intervention).

COMMISSIONER: I do think that in fact a lot of this does hinge on what

we mean by lost. Mislaid seems to me the word that might be more accurate; they may not be totally and forever lost to the annals of mankind, but mislaid for substantial periods of time might be a more – a word which might have more agreement.

Because I do think that throughout SAPS have taken a view that dockets are not permanently lost. But I think we are not – the evidence before us does indicate that dockets do seem to get mislaid.

MR HATHORN: Commissioner, whether or not they are lost, we don't know. But they were not accounted for in January this year and we haven't heard anything since then. And whether there might be argument that they weren't completely lost and they were floating around somewhere, they just couldn't lay their hands on them, whatever the situation is, it's absolutely clear that even despite this intensive scrutiny and this intensive process of inspection the management of dockets in the Harare Police Station in January this year was still a shambles and it's still evidence of a far-reaching inefficiency with regard to the administration of dockets.

Commissioners, I think that I had better now pass on to Ms Mayosi. I have used more than my fair share of the time.

COMMISSIONER: Thanks, Mr Hathorn. Ms Mayosi?

SUBMISSION BY MS MAYOSI:

Thank you, Commissioners. Commissioners, I will begin by addressing the Commission on the issue of the relationship of SAPS with members of the community. It is covered on page 332 of our closing arguments. In their complaints and throughout the evidence led in this Commission the community complained that they have lost confidence in the ability of the police to protect them from crime and to investigate crimes once crimes have happened.

Now community witness after community witness has told this Commission and described to this Commission the precise ways and the manner in which they had been treated by SAPS and the manner in which SAPS had failed them, either after they themselves had experienced crime or members of their families had experienced crime.

And just to locate the evidence in the context of the Presiding Commissioner's discussion with Advocate Hathorn about this issue of the breakdown, I am not going to take the Commission through all of the evidence that was led relating to this issue, but I will just use the testimonies of a few witnesses to demonstrate the point about how trust and faith has broken down from certain members of the community.

The evidence of Malwande Msongelwa was a good example of this. She is the young woman was murdered and the police then arrived and his body lay in an open field. They then approached the body, handled it a bit and left to look for a suspect that she had identified; didn't find him. The body lay there for a couple of hours until the body was ultimately retrieved.

The following day the police then came to her house, did not enter her house. Her live brother went outside and they told them, the family, that the investigation for all intents and purposes had ended; the suspect that they had identified had nothing to do with the murder and that was the end of that.

She told the Commission that she hasn't heard from the police since then about the investigation into her brother's death. She said in her

view the police – she never went to the police again after that to find out what had happened, to find out how the investigation was progressing, because she thinks that the police do not care about the people in Khayelitsha. She said in her own words, she doesn't trust the police.

I think that example is a demonstration of a lack of compassion on the part of the police, a lack of empathy. There are many, many issues that are demonstrated by that example; the manner in which the crime scene was handled, the suggestions of serious incompetence on the part of the police. But on the relationship side with victims of crime, Malwande's conclusions that she has no trust in the police, she has never returned to them, she has never heard since what has happened to her brother.

Nontembeko Nduna's experience demonstrates again a level of callousness on the part of the police insofar as they dealt with her family. Her niece was driven over by a police vehicle, no trauma counselling was provided to the children that her niece was with at the time. The mother of the child ultimately died years later without ever having heard what happened to the policeman who ran over her child.

Nontembeko ultimately heard we hope, the Commission certainly heard what happened ultimately to that case only after she gave evidence at this Commission. One can only hope that that information has been relayed by SAPS to the family. But it's a demonstration again of an uncaring attitude on the part of the police.

MT was the young man who worked for SASSA, who gave evidence that his cousin was murdered the course of what appeared to be a vigilante attack whilst he appeared to be breaking into a house. He went to the police to enquire. The detective who was dealing with him dealt with him harshly. His conclusion is that the police don't respect – he felt disrespected, he was not shown the respect that as a victim of a crime he felt he should have been shown and his conclusion is that the police don't know their role towards members of the community in Khayelitsha and their attitude is one of indifference.

Another very poignant example was demonstrated in the evidence of VSM, the elderly lady whose family, four members of her family, were burnt in a shack. The matter went to court once or twice, the docket was lost, ultimately the docket was found. When she went to enquire the perpetrator, who had in fact handed himself in, had left, had gone to Joburg. She told the police the perpetrator was in Joburg and the policeman says to her she must – Joburg is big, she must find out where exactly in Joburg this man is.

And what she says about how she felt that day, she says "that day I just left like that, but my heart was broken because at this time he was making me do the work of the police". She said "I have never gone back ever since", that was in 2008, "ever since they asked me to investigate where he was in Johannesburg. That is where I lost trust in the police and I told myself I was leaving".

Now that is the evidence before the Commission, that and more, witness after witness after witness say this about the police. Now the Presiding Commissioner had this question, what does it mean about breakdown in relations and how is it to be determined. It is by no means an easy question to answer, but the relationship between the police and members of the community is characterised by trust, it's a relationship of

trust.

You have police who are providing a service, they are service-providers, and you have the communities who are receivers of a service. Now what I find problematic about the attitude of SAPS in relation to this issue of a breakdown is this; you have a service-provider who is providing a service to a service-receiver. The service-receiver says, I don't trust you; the service-provider says no, you do trust me. That's a problem there.

At the very least that discourse demonstrates that the relationship of trust has been compromised, that very discussion shows that there is a problem with the trust in that relationship. We say the evidence shows that it goes further than just being compromised, it's broken; there's a breakdown.

Now we are not saying there's a complete breakdown because some members of the community of Khayelitsha, I am certain, have had good service from the police or have not experienced the police, have no reason not to trust the police. Even those who have been badly served by the police go back because their instinct is to want to be protected by the police; they go back. And evidence before this Commission shows that even after they have sworn they don't trust the police, they've given up, they still go back to the police to report.

We never said there was a complete breakdown. But Commissioners, this is a community that does not trust the police, period. The evidence demonstrates that. And this Commission must find that the units at – the SAPS units operating in Khayelitsha are not responsive to the community of Khayelitsha; they treat them with disrespect, they treat them discourteously, they treat them with contempt.

They don't provide – they don't communicate with members of the community who have become victims of crime, relating to their cases. And this evidence that has been led by community witness after community witness was confirmed by the Mtete Report that my colleague referred to earlier. They found that the respondents that were surveyed perceived there to be little or no progress in arrests and convictions.

The main reason for not reporting crime among the respondents that were surveyed is a distrust of the police and a fear of victimisation by perpetrators. Khayelitsha community members feel fundamentally unsafe in this community. Now how do you repair a relationship of trust that has broken down? It's a difficult, difficult question. It's a difficult question in personal, individual relationships; it is bound to be compounded, the difficulty, when you are talking about an entire community and an entire organisation, institution such as SAPS.

But Mr McLean had useful recommendations, Commissioners, in relation to this issue and our recommendations rely very heavily on his recommendations in that regard. He spoke about research that had been conducted by colleagues of his in the US that shows that victim satisfaction with police performance is significantly more related to the level of respect and concern shown by police officers more than the outcome of police investigations.

The research he was talking about, and I think it was mentioned also by Mr Andrew Faull in his testimony, led to the development of the procedural justice model. And we are recommending, Commissioners, as a first step in approaching this question of trying to repair and restore this

relationship, that the components and principles embodied in the procedural justice model be unpacked in ways that it could not possibly be unpacked before this Commission, for various reasons; but be unpacked, be understood and be implemented at the police stations in Khayelitsha.

The important components of that model, of the procedural model, or why we regard it as an important one is because it is premised on the belief that people in their dealings with the police and other legal authorities value just and decent treatment and transparent and fair decision-making over concrete outcomes. It is actually ...(intervention).

COMMISSIONER: Just to pause there, Ms Mayosi. There are two things; one is that we are having problems with the sound. The sound people have gone to fetch another sound box. We could take a break for half an hour and I think it's very a decision that we would leave to the complainant organisations. I am not sure if people can hear at the back or if it's just the interpretation. Ms Dissel? It's the interpretation.

Do you want to just take a short break and see what people want to do, whether you want to interpret – whether you want to pause until they come back? I mean, it is going to knock us on but I am sure that Advocate Pikoli and I don't mind doing that, if you would like us to do that.

MS MAYOSI: It seems sensible to take a break, Madam Chair.

COMMISSIONER: Okay. Alright, good. Well we will then take a break until hopefully they will get back and perhaps, Ms Dissel, you can let them know that we are waiting for them to arrive back. Thank you. Okay, we will adjourn.

COMMISSION ADJOURNED: (at 09:55)

ON RESUMPTION: (at 10:05)

COMMISSIONER: Right. I think that the sound now seems to be functioning. Thank you very much again to the sound technicians for acting so quickly on that. Ms Mayosi, you may proceed. We will adjust the times accordingly; I think we have had about a 10-minute adjournment.

SUBMISSION BY MS MAYOSI: (cont)

Thank you, Madam Chair. On the model of procedural justice, which the complainant organisations see as a very sensible model to apply in the Khayelitsha police stations or to test at the very least in order to repair community police relations, Andrew McLean explained that through the way in which police treat people, police officers talk to them about their inclusion and position within society, if police treat people fairly then they encourage people to believe that they are on the same side and they share similar outlooks and goals.

Treating people unfairly has the opposite effect. I think this thread of treating people unfairly runs through the experiences, is a common thread in the experiences, spoke and unspoken, of the people of this community insofar as how they see – how they perceive the police. As I said earlier, I think as an instinct people want to trust the police, people want to be protected and to be secured by the police.

But the procedural justice model seems to be intuitive and it seems – it sounds to be very much in line with the values enshrined in our Constitution; treating people with dignity, fairly, in a manner that promotes, you know, the achievement of the values of our Constitution is

really the only way to go. And it seems to me that at the core of the way in which this community experiences the police, it is very – they experience the police in a very undignified way, in a way that removes or humiliates them; as I will say more about when I talk about vigilantism and the evidence of Professor Gobodo-Madikizela.

Given that a key claim of the procedural justice model is that police effectiveness in fighting crime is less important than fairness, dignity and respect in building trust, legitimacy and respect for the rule of law, and that it is the infringement of these very values which is at the heart of the complaints before this Commission, the complainant organisations argue, Commissioners, that this Commission must recommend that SAPS give urgent consideration to the training of police officers in, amongst others, communication skills and other components of the procedural justice model, such as compassion, such as empathy, such as listening skills, in order to implement these in Khayelitsha and to begin to build the trust and the legitimacy in SAPS without which the police cannot police effectively in this community.

Dealing briefly with the role of reservists; our recommendations are there. I think what is clear from the evidence relating to the role of reservists is that the capacity of reservists has not been established. There are various problems relating to that. I think Brigadier Dladla mentioned a moratorium on the recruitment of reservists; throughout the three Khayelitsha police stations the use of reservists has decreased in number; their numbers have actually decreased since about 2010 or 2011.

I think the policies relating to the recruitment of reservists and the limitation or the prohibition of recruiting reservists who are foreign nationals also is a problem, or the prohibition against recruiting as reservists people who are unemployed is a serious problem in a community such as Khayelitsha and elsewhere in the country for that matter, where people are massively unemployed and those resources could be used in order to participate in and be in partnerships with the police.

The recommendations we have in relation to reservists, Commissioners, appear on page 353 of our closing arguments, the prioritisation and implementation of national instructions regarding the recruitment of reservists must be pursued.

The Commission heard, as I've mentioned, that the recruitment policy that has been developed by the Minister of Police and was recently announced has been finalised. However, there are no official directives that have been given to authorise the continuation of the recruitment of reservists. It is recommended that Commission should give – should require that the new national instruction and associated directives be finalised and implemented with immediate effect.

There must be reservists present and operating at both sector and cluster commander levels. The policy against recruiting reservists who are unemployed or reservists who are foreign nationals, we submit, is arbitrary and it actually is against promoting or reflecting in community policing the diversity of the communities in which policing takes place.

This Commission should recommend that those prohibitions be looked into, be revisited and done away with. Persons seeking to be reservists should apply to SAPS and their applications should be decided on their merits in terms of SAPS guidelines as well as in accordance with

our constitutional values.

I think on the issue of CPFs, due to the time, much has been said about CPFs and the challenges facing CPFs are largely uncontroversial, so I will move straight to the recommendations that the complainant organisations make in relation to CPFs.

The first being really quite basic, that CPF meetings must be regularised and held on a definite week and day of the month. I think Mr Hanif Loonat had certain recommendations or suggestions he made there as to when CPF meetings could be held, cluster meetings could follow in another week, in the third week provincial meetings and so on. So that needs to be regularised and stipulated and made law in a sense.

All CPF agendas should be produced timeously ahead of meetings and circulated to all the stakeholders; regular quarterly reports of CPF progress should be produced and disseminated. The chairperson of the respective Khayelitsha station CPFs should attend the SCCF meetings. This is important in order to ensure there is an exchange of information between CPFs and the station about, among other things, crime patterns.

The issue of resources is one of the critical or the most critical issues when it comes to CPFs. CPF members should be trained, the human and physical resources that CPF have access to; the members should be trained in order to acquire an understanding of the roles and the functions of CPFs and the relationship that CPFs should have with the community versus the relationship that CPFs should have with the police.

As far as physical resources are concerned; all CPFs should have an office, a telephone, a computer, internet access, resources to enable them to disseminate newsletters within the communities, two-way radios, torches and bicycles.

On the issue of training, as to the understanding of their roles; critically the dual nature of CPFs is an independent monitoring and oversight body on the one hand ...(intervention).

COMMISSIONER: Ms Mayosi, pause there. We have seen your submissions on this. It is noticeable to me that you don't really deal with the EPP system that the Department of Community Safety has really established in relation to CPFs, upon which we had much evidence. Do your clients have any comments on the EPP system? This is the system, as I understand it, whereby resources are made available to CPFs against certain performance of certain functions of the CPFs, which include oversight and visits to police stations and so on and so forth.

MS MAYOSI: We made brief submissions regarding the EPP on page 372 and 373. I think the general view that our clients have regarding the implementation of the EPP is that DOCS is not playing the function that it should properly play in terms of ensuring the proper implementation of what appeared to be really commendable goals in the EPP.

I think if I recall the evidence of Mr Mgxaji at the end of phase one in relation to the EPP, there doesn't seem to be much use or gain that the CPFs themselves are getting from the EPP. It doesn't appear that they know exactly the benefits that they could acquire from the EPP.

And our complaint as the complainant organisations is that DOCS is taking a backseat role in terms of driving that and making sure that it is properly implemented and making sure that it achieves the proper capacitation of CPFs and the proper enabling of CPFs to be able to perform their roles. So our submissions are quite brief from page 372, ...

(intervention).

**COMMISSIONER:** But it wasn't clear to me there, but what you are saying is that you have no difficulty with the programme but what you're suggesting is that there be better training and resourcing to ensure it works well. Is that – am I correct in saying that?

**MS MAYOSI:** Yes. The PPF also require skills – sorry, the EPP requires the CPF members themselves to be skilled in order to take advantage of what it offers, because it requires the production of newsletters, websites and general communication skills. So DOCS is not driving that, from our view, and so it remains one of the programmes that are commendable but that are not achieving their goals insofar as capacitating the CPFs.

Commissioners, may I move to vigilantism briefly? And that is covered on page 194 onwards. In the context of Khayelitsha we submit that vigilantism is at the heart, at the core of it, a reaction to oppressive and pervasive levels of crime in this community. As Professor Gobodo-Madikizela explained, people take the law into their own hands because they feel they can no longer rely on what they perceive to be a weak and ineffective police system. The community views their violent actions from the perspective of self-defence.

Now perpetrators of vigilante action are ordinary members of this community; men, women and children all participate in vigilante or vengeance killings. The victims of vigilantism killings are generally young men between the ages of 18 and 30. In the Bundu Courts report it was found that the majority of victims were guilty of suspected crimes. Now from the way in which Professor Gobodo-Madikizela described it and from the evidence before the Commission, many acts of vigilantism or vengeance killings in Khayelitsha are spontaneous; they happen on the spur of the moment and they appear to lack any forward planning.

But even having said that, some of them do involve some level of planning, if the Commission has reference to the evidence of Nomamerika Simelela. Whether or not a vigilante or vengeance killing is planned or not planned, what is common to these incidents is that they are triggered by an act of criminality, they will be spurred by a belief that a crime has just been committed or that those individuals are involved in a pattern of committing crimes.

Now there's no consensus in the community members regarding the justification or how they feel about vigilante attacks in Khayelitsha. Dr Gillespie explained that while some members of this community are convinced that it is the best way to stop crime, other members of this community are horrified by it. And again the Mtete research and consulting services report showed that just over a quarter of the respondents surveyed in Khayelitsha believe that vigilantism is justified. In Dr Gillespie's view there is a sense that vigilantism is understandable because of the dire socio-economic conditions in which people live, coupled with inefficient law enforcement agencies, including SAPS.

Now the prevalence of – it's difficult to know definitely the prevalence of vigilantism or vigilante attacks in Khayelitsha, the problem being a reporting problem. We are told by SAPS that there is no classification of these incidents as vigilante killing *per se*, a murder is a murder, and so it's difficult to track and say with certainty. The Bundu Courts reports however identified 78 cases of these killings in Khayelitsha between April 2011 and June 2012.



What is clear from the evidence is that SAPS members are aware, whether they classify them as such or they don't classify them as such, they are aware of vigilante killings, as vigilante killings in particular. They refer to them as Bundu Court killings, they use the terminology that distinguishes these killings from other ordinary killings.

This is clear from the minutes of CCF meetings and the discussion that Advocate Bawa had with Professor Gobodo in the evidence. It is clear from those minutes that even though they don't classify them, they know them and they refer to these killings as such. And they know that these killings are triggered by crime incidents or perceived incidents of crime.

What is astounding or remarkable is that given this knowledge, this acknowledgment within SAPS about the nature of these killings and how these killings occur, it's shocking really that SAPS has to-date still not developed any strategy to respond to these killings in Khayelitsha. Something else that is clear in the Bundu Courts report is that many of the victims of vigilantism had pending cases and arrest warrants issued against them. What this shows is that SAPS is failing and the criminal justice system is failing to protect community members from dangerous criminals.

The murders of these repeat offenders are indicative of the consequences of police inaction and police incompetence. It is our submission; we agree with the evidence of Professor Gobodo-Madikizela that the causes of – it's over-simplistic to say police inefficiency or police inaction is the only cause of this problem and we agree, to be fair, it cannot all be contributed to SAPS. It's a complex issue, there are social issues that come in to play.

But what cannot be denied is that the failure of the – the lack of police visibility, the slow response times of the police, the failure of the police to address the needs of the community of Khayelitsha when they are required to address those needs, is one is one of the components. And Professor Gobodo-Madikizela spoke about the general trauma and humiliation that human beings feel when they live in conditions such as Khayelitsha.

And she further then said that when they go to the police and they report matters to the police and they are treated with contempt, discourteously, they are disrespected, that is a further trauma which may in itself contribute to what it is that triggers a vengeance killing in a manner that these vengeance killings are happening. Going to recommendations ...(intervention).

COMMISSIONER: It is really striking that the Mtete figure, which shows three quarters of the community are opposed to vigilante killings, is echoed in the research that Professor Seekings referred to. And it does seem to me to be an important resource in a sense for the development of a strategy.

If people really – actually, you know, the significant, vast majority of people really don't agree with this, then it seems to me that it would in many ways be much more concerning if 75% of the community, even despite the fact that there's not very high conviction rates by SAPS, felt that vigilante killings were justified, it would be a much more difficult issue to deal with.

Do you have any suggestions as to how SAPS can work on this in a

strategic way using the fact that the community generally is opposed to this kind of , you know, this non-rule of law addressing of crime?

MS MAYOSI: One of the recommendations we have, Chairperson, as you will see, is the issue of developing and implementing an intelligence-led policing strategy to address vigilantism in Khayelitsha. And in our submission, this intelligence-led policing strategy would entail careful planning and communication by SAPS with community members through education, information sharing, to obtain an informed understanding of the police's role in responding and investigating crime.

I think the statistics of the results of the Mtete study really confirm that vigilantism doesn't happen because the community are a community of lawless people; it doesn't happen because people have poor value systems or they just believe in taking the law into their own hands. In the first instance, people want to trust SAPS, people want to rely on SAPS. And I think even in the case law, the case that we cited in our heads demonstrates that these are decent people who, in the first instance, want SAPS to step in and to do what SAPS needs to do.

Now the fact that SAPS, as is evident evidence from the minutes of their meetings and their discussions, actually really know that killings of this character occur, they know the killings of this character occur when people are believed to have committed a crime; the information is there. The community is one of the resources to get that information and to come up with a strategy that understands this community, that talks to this community, that is intelligence-led and that is one of the most important recommendations, Madam Chair, to that problem.

COMMISSIONER: The other thing that seems to me that came out of Professor Gobodo-Madikizela's evidence is it's the dehumanisation of the victims. Really what's happening is we are losing sight of the fact that mostly these are young men who have committed maybe a series of very often relatively minor robberies or offences, most of those examples in the so-called Bundu Courts report are talking about quite minor offences, and somehow we have to try and put the person back into the picture here, which SAPS could play a role in and perhaps, more broadly, education systems could also as well.

In a sense it's just another indication, if one looks at the overall picture, the socio-economic picture of Khayelitsha, the people we are most failing are young men. They're the poorest, they're not getting jobs, they're not being properly educated, they're being killed in these sorts of attacks, they're victims of youth gang attacks.

And it's kind of where we have to reclaim the space that we need to not – to stand by young men. And somehow that needs to be kind of a communication that the community need to address. It can be your son, it can be your cousin, it can be your brother; that's who we really have to think about.

MS MAYOSI: Indeed, Madam Chair. One of the things – one of the affidavits we refer to in our closing arguments is an affidavit by, I think a person called UZ, who comments on that issue, that in Khayelitsha everybody generally participates in this. When somebody gets killed in this way and it's your son, you don't know who did it; it could be your neighbour, you just don't know. And I think what is important from a SAPS' response is again what I think what Mr de Kock said – Dr de Kock said, a simple statement which is critical; prevention is better than cure.

SAPS has the information, we believe has access to the information to understand where these things happen, how these things happen, what triggers them. The triggers are known; they should be focused on strategies to prevent this breaking out and a lot of work needs to go into rebuilding the relationship of trust, into visibility; a lot of resources must be thrown at preventing it, because once it's happened it's too late.

And there seems to be an attitude of helplessness from SAPS that says we can't – how could SAPS have been there, it's spontaneous, there's nothing we could have done, there's just no way we could have prevented that. It can't be, it can never, ever be right.

The second recommendation we make, Madam Chair, is that in order to deal effectively and to deter participation in vigilantism the police must, as a necessary measure, ensure that steps are taken to arrest and charge those involved. This atmosphere of impunity that people will gather in a crowd, very quickly rapidly kill somebody and disappear back into the crowd, into the community, cannot be allowed to stand. The police must throw resources in investigating who was involved and make sure that people are prosecuted; because again the helplessness and the inaction, it can't be allowed.

In their evidence Professor Cartwright spoke about community police programmes, which we are recommending be reintroduced and they would go a long way toward improving relations between the community and SAPS and providing a legitimate and accountable communal restorative justice platform.

The issue of infrastructure is an important one and it's one that cannot be overlooked. Things such as streetlights should be erected throughout Khayelitsha, infrastructure development must be sustained and further developed so that people are made to feel safe in their communities and that police are able to maintain a visible presence and respond timeously to reports of crime.

Noting, Madam Chair, the traumatic effects of witnessing, experiencing and participating in vigilantism, Professor Gobodo-Madikizela believes that the problem of vigilantism should be considered and treated as an illness and a public health issue. This then of course brings in other organs of State such as social services, such as the Department of Health, who in the development of programmes working with SAPS, could also address the public health aspects of this issue.

One of our recommendations and finally, Madam Chair, is that we, the complainant organisations, recommend that as a matter of urgency or priority a task team be formed within SAPS that is headed by senior – experienced and senior detectives to give special focus in developing a strategy in understanding the problem of vigilantism in Khayelitsha; developing a strategy, institutionalising the strategy within the three police stations in Khayelitsha, focusing on the prevention of these incidents and focusing on really ensuring that the needs of the community are taken care of insofar as really talking to this issue of vigilante killings.

And I think the first step within SAPS is to classify them as such, is to begin to classify these killing as vigilante killings, vengeance killings, Bundu Court killings formally and to begin to implement a strategy that talks to that classification.

MR PIKOLI: Now tell me; in the absence of this intelligence capacity how do you think then this task team will operate effectively?

MS MAYOSI: The intelligence capacity is critical, not just to deal with vigilantism but to respond to crime period. Otherwise, I mean, it leads to the phenomenon that Dr de Kock was talking about that SAPS took umbrage at, which is policing by chance. You would be responding to vigilantism in a manner that does so by chance. Intelligence-led policing is critical or else you are not policing systematically. So the two do go together in our view.

MR PIKOLI: It goes beyond just a question of vigilante killings, it's just the approach that needs to be adopted when it comes to crime prevention basically?

MS MAYOSI: Indeed, indeed, it's an approach that needs to be adopted. But in order to deal urgently with this issue, that is where the task team comes in, in order to prioritise it and to begin to understand and develop a strategy around this issue in this community. I think that's about all I have time to talk about, Madam Chair.

COMMISSIONER: Thanks, Ms Mayosi. Mr Bishop?

SUBMISSION BY MR BISHOP:

Thank you, Commissioner. I think about 15 minutes, would that – okay, thank you, Commissioner. I am going to address three issues; firstly issues around crime intelligence, secondly issues relating to human resources, and thirdly issues of governance.

To pick up where we left off with Ms Mayosi on the issue of crime intelligence; we submitted in our submissions that there has been a failure of crime intelligence in Khayelitsha. In its submissions SAPS disagrees with that. It says that the evidence in Khayelitsha is that crime intelligence plays its role effectively in ensuring that crime threats are identified to the police and that there is evidence that the police in Khayelitsha are following the appropriate norms and standards with regard to crime intelligence.

We submit there's two pieces of the evidence that demonstrate that that assertion is false. The first is Dr de Kock's evidence, which we deal with in detail in the submissions. His evidence is based primarily on an analysis of the SCCF meetings during a period of six months in 2012.

And he concluded, based on that analysis, that either there are no crime threat analysis reports being prepared, they are not being presented to the SCCFs or they are not being discussed at the SCCFs; that the SCCFs are not focusing only on crime, which is their mandate, but they are addressing other matters related to management and operations, and that SAPS is not operationalizing any intelligence that it is producing; as he said it, the engaging of policing by chance not policing by intelligence.

It also came up in the testimony of Dr de Kock that there is a clear preference within SAPS for relying on experience of officers over evidence gathered by an analysis of crime statistics. The second basis for our assertion that SAPS is not engaging in crime intelligence comes from extracts from SAPS' own officers' testimony. There are a variety of these; I just want to mention a few of them.

The first relates – comes from the evidence of Colonel Harri, who testified that it was a failure of crime intelligence that delayed their ability to capture a serial rapist, both the failure of crime intelligence and a lack of communication between her office and crime intelligence.

Secondly, Major General Jacobs testified, he is talking about the

CIO here, this is at page 6 080 of the record, talking about the CIO, so he's not – so people ask no, they want crime intelligence, they want information, that is what the CIO must do, that is what the Vispol police ... Me, I am a visible policing member, I forget I'm now with crime intelligence, I know my area, I know it well, I know what the patterns are and I know who the suspects are. And this is the head of crime intelligence still indicating a preference for evidence-based policing – sorry, for experience-based policing over evidence.

Major General Jacobs also spoke about the problem with integration between crime intelligence and visible policing, partly because crime intelligence had been a national function and has now been moved to the stations. He says it takes time for this integration and that's why the integration between crime prevention – because the command centre falls under visible policing and crime intelligence is separate and there has to be that integration. And that's why we have an intelligence officer that's meant to sit there, to be able to pick up on patterns and to be able to assist. That's at 6 084 of the record.

Commissioners, there are other examples in the testimony of Colonel Marais and Colonel Tobias that also demonstrate that while there is crime intelligence happening there is also an acknowledgement that there are shortcomings in the way that crime intelligence is gathered and implemented in Khayelitsha.

Our argument is not that there is no crime intelligence in Khayelitsha; there are CIOs, they are analysing the data that is collected, there are SCCF meetings that are happening. And we also acknowledge that on the evidence we have available it's impossible to determine the exact extent of the problem or the exact cause of it; whether it's a cause related to training of CIOs or related to the management by station commanders. It is not entirely clear from the evidence available to us exactly why there has been a failure.

But we do make four points. The first is that it appears that the basic tasks of the crime intelligence officers and the station crime combating forums are not occurring as they should. Second, that what information is being created or produced is not being properly operationalized by the stations. Thirdly, that there is a culture within SAPS generally and within Khayelitsha that doesn't pay special attention to evidence-based policing and privileges the experience of officers in identifying hot spots and so on. And lastly, the fourth point, that better use of crime intelligence would make the police more efficient and would improve their ability to deliver.

And it is based on those four findings that we make our recommendations. The first recommendation is that there needs to be a study about exactly what the cause is. Before a solution can be found we need a deeper understanding of why has there been this failure. Is it a result of training, is it a result of misunderstanding of the role of the CIOs that they should be focusing more on stats than on intelligence? What exactly is the problem? That's the first requirement. That could be conducted by SAPS, either cluster or provincial, and that should happen immediately and the results should be implemented.

The second is that the quality of the crime threat assessments or crime pattern assessments and the operationalization of decisions taken at SCCF meetings should be part of the evaluation of the station

commanders. The third is that, and this perhaps depends on the results of the study, but that crime intelligence officers should be instructed and measured on the proper performance of the three non-negotiable functions that Dr de Kock identified. Those are our primary recommendations with reference to crime intelligence. We make a few other recommendations in the submissions.

I would like to move on now to the question of human resources. I am not going to address the question of physical resources but, Commissioners, if you have any questions in that regard I can also answer those.

COMMISSIONER: There is just one question on crime intelligence. I mean, what is a matter of concern to me, and indeed the Commission wrote to SAPS earlier in the week to say that, you know, in the light of repeated requests for crime threat analysis and the failure to produce them, the Commission is going to conclude that there are none. And yet in the heads of argument by SAPS they assert that it is happening.

I am somewhat at a loss to know how one deals with what seems to be a completely disconnect between what seems to be happening on the ground and the evidence before the Commission and SAPS' assertions and what that means for recommendations the Commission should make.

MR BISHOP: Commissioner, on my reading of the evidence there probably are some CTAs being produced. It seems unlikely that there is nothing being produced. The content of those is really more likely to be the issue. But I agree with you that the fact that SAPS hasn't produced the CTAs, other than one cluster CTA that Dr de Kock testified was not a CTA but was a report, either they don't exist or SAPS is unwilling to produce them because the content would reflect poorly on them. But their failure to produce it can only result in a negative inference one way or the other.

COMMISSIONER: Thank you.

MR BISHOP: On the issue of human resources. It seems to us that there is two questions; the first is whether there are adequate human resources in Khayelitsha, are there enough policeman, and the second is whether the distribution of policemen within the Western Cape and South Africa is fair and rational.

On the question of adequacy; we can put it no better than Mr Arendse did when he was questioning a witness before the Commission, when he said that all of the station commanders have on a regular basis said that they were under-resourced and therefore it was insufficient and that they wanted more personnel and more vehicles.

That's true, it is bared out by the evidence, that all the station commanders when pushed, said yes, we would like more policemen. Some of them were unwilling to say that the numbers they are currently assigned were inadequate. But it is clear from the evidence, the number of dockets that police – that detectives have to carry, the inability to cover all the areas when patrolling, that there are not enough policemen in Khayelitsha to perform the functions as required.

The question then is whether that's a similar problem in all other stations in the Western Cape. If all other stations have a similar level of under-resourcing and Khayelitsha was still performing poorly, it might not be because of a lack of resources. But as we know, the evidence shows that there is an unequal and irrational distribution of human resources

among stations in the Western Cape. Evidence of both Jean Redpath and Brigadier Rabie demonstrated this.

It showed that historically black or coloured areas like Khayelitsha, which have high levels of poverty, high levels of unemployment, informal housing and some of the highest crime rates in the country, have fewer policemen per population than historically white areas which are relatively affluent with high levels of employment and relatively low levels of contact crime. And General Lamoer himself acknowledged that the distribution is irrational.

In order to know how to address that, we have to ask what is the cause, why is there this irrational distribution. And it seems to us that there are three possible causes. The first is that the model employed by SAPS, explained by Brigadier Rabie, the THRR, that there are certain flaws in the model and that it results in some of these distortions.

We have discussed some of them in the submissions; they relate to possibly the weighting of property crime compared to contact crime, the weighting of issues like unemployment or informal housing and so on. But the real flaw which was identified by Jean Redpath was that SAPS hasn't done this type of analysis, looked at what are the results of this model and can we justify those results. So that's the first; there are clearly flaws in the model.

We don't suggest that the model should necessarily be replaced by one as simple as Jean Redpath proposed. It is a very complex issue and Brigadier Rabie was at pains to explain and he's correct, it is complex and there is value in having both the theoretical allocation of human resources and then the distribution of human resources and they are different issues. But clearly the model needs to be re-evaluated.

The second is the quality of the information presented that's fed into the model, the garbage-in, garbage-out problem. And SAPS is fully aware of this and is taking steps to address the information problem.

The third, which is perhaps the most concerning, is what seems to be a disagreement between the national level of SAPS and the provincial level about the role of the Provincial Commissioner in the allocation of human resources. According to Brigadier Rabie, the Provincial Commissioner, there's a fairly wide discretion to allocate the resources that are assigned to the province.

The THRR is used to just determine how many resources go to the province, then it's up to the Provincial Commissioner to assign them between the stations within certain parameters with regard to minimal number of people in a police station and certain others; but they had a large discretion. And General Lamoer was under the impression that he did not have that power. It is our submission that section 12(3) of the SAPS Act is quite clear, that it does afford General Lamoer that power. And if there are any obstacles within SAPS in terms of regulations that he believes prevents him from doing that, they need to be revaluated. Alternatively, he needs to simply exercise his power to distribute the resources more fairly amongst the various stations in the Western Cape.

So our recommendations are first that General Lamoer should distribute the resources more fairly; secondly, that the formula used by Brigadier Rabie should be released and made public. Jean Redpath also testified that transparency is extremely important and it might well have helped in identifying this issue sooner. Thirdly, that the model needs to

be re-evaluated through a cooperative exercise.

And lastly that one of the other problems relates to the lack of understanding amongst members in SAPS about exactly how the allocation process worked, very few people other than Brigadier Rabie seem to understand it. And so training within SAPS, particularly at senior levels and station commander levels, about how the THRR works, what are the relevant factors, is extremely important.

The last issue I want to address, and I'll do so very briefly, is the issue related to governance. This is dealt with very briefly in the submissions unfortunately, Commissioner, so I am going to expand slightly on what is in the submissions now. We submit that there has been a failure of oversight and it's not a complete failure. Clearly there is oversight happening; SAPS is conducting internal audits and inspections that are fairly thorough and indicate what steps should be taken.

The problem is that those steps are not implemented. DOCS is trying to perform its role, but due to what seems to be some form of breakdown with relations with SAPS since 2010, has been unable to perform its role effectively. IPID exists and is independent, as you have heard, but is underfunded and interprets its mandate unduly narrowly, or its mandate is unduly confined by the statute.

The civilian secretariat is also independent but it remains understaffed and is yet is not fully performing its role. There is also some uncertainty about its relationship with the minister. The Provincial Secretariat exists but doesn't seem to be functional, and we do not have yet a provincial ombudsman. Finally, the CPFs exist but they are – the extent to which they are functional is debateable. They're clearly under-resourced and they are not fully independent from SAPS, which we heard repeatedly because of the close relations between CPF members and SAPS members.

So there are a large member of bodies that can provide this type of oversight but there are also real difficulties. And it appears from a variety of issues that came up before the Commission – I am just going to mention a few of them.

The failure to remedy the identified defects that came up in the provincial reports, the unfair allocation of resources should never have occurred if there was good independent oversight of SAPS as a whole; the mishandling or non-handling of complaints and issues relating to arrest and detention are all issues where the evidence shows there has been some degree of failure of oversight.

General Lamoer in his testimony said that it is important for us to have bodies that will basically oversee us and direct us in certain – when there are certain issues that have been identified. That's at page 6 716 of the record. However, in SAPS' written submissions they make statements with regard to oversight bodies that are slightly concerning. At paragraph 179 of the written submissions where they say,

“Oversight models that are consistent with our Constitution by providing valuable input into policing are a requirement. However, these oversight models must not usurp the power of the police to implement acceptable policing strategies in pursuance of the constitutional duties solely placed on them.

In the exercise of oversight functions there should be deference given to the police. Oversight should be responsibly exercised to



strengthen the police and not to provide a platform to expose police weaknesses in a manner that compromises their ability to provide security.”

Now of course oversight shouldn't be used as a way to attack the police. It is meant to strengthen the police. But oversight must also be completely independent, honest and robust if it is going to be effective, and transparent. If it is not independent, honest, robust and transparent it is not going to be helpful at allowing SAPS to improve its delivery of services.

With regard to the recommendations that this Commission should make; it is difficult, I think, for this Commission to make recommendations with regard to the oversight system for SAPS as a whole. It doesn't have enough information to deal with it and it's an extremely complex problem.

However, there are some recommendations that we believe the Commission can make in this regard. The first relates to the relationship between DOCS and SAPS. We as the complainant organisations do not take a strong position on who is to blame for this breakdown. There seems to be a debate about that. It doesn't trouble us. Clearly there is a problem in the relationship between DOCS and SAPS and that needs to be remedied.

We believe the best way for that to happen is by the inclusion of a memorandum of understanding rather than by the promulgation of regulations under the CSA. But if those regulations are promulgated after consultation with SAPS and with the buy-in of SAPS that may well be an alternative. But it seems unlikely to us that the imposition of regulations will improve with relationships with SAPS.

Secondly, that as a general rule the reports and findings of all oversight bodies should be made publicly available. Now there will obviously be exceptions to that when the reports reveal operational requirements, ongoing investigations, names of particular officers or victims that should not be revealed, and that matter should be redacted from the reports. But the starting point must always be transparency, because the oversight bodies' effect will be vastly multiplied if the reports are public and are open to public scrutiny. And also the likelihood of any findings or recommendations being implemented will be vastly enhanced.

Thirdly, that the CPFs should not be regarded as replacement for truly independent oversight. They have a role to play and it is important for the community to engage in oversight. But they have limited – they will always have limited resources and independence and they should only be seen as a supplement to oversight by other bodies.

And lastly, because of the multiple bodies that are involved in oversight, there should be regular meetings between them in order to a) share information between them and to discuss common strategies and approaches together with SAPS. So those are our recommendations with regard to governance.

COMMISSIONER: What are your submissions on whether reports prepared by the Provincial Inspectorate ought to be made available to DOCS as part of its oversight functions, particularly in relation to the Khayelitsha police stations going forward?

MR BISHOP: Yes, Commissioner. I think DOCS, in order to perform its role under the Constitution it needs to have access to information to be able to perform it effectively. That seems to be the standard set by the

Constitutional Court in the matter involving this Commission, with regard to whether this Commission would have subpoena powers. And it seems that a similar approach would apply here. If DOCS is going to engage in meaningful oversight it should have access to documents.

I mean, virtually all documents that are required from SAPS, it is difficult to think of documents that SAPS could legitimately without, although ongoing dockets, perhaps certain documents which are particularly sensitive could be redacted. But generally they should have access to all of them, including the Provincial Inspectorate reports.

Commissioners, unless there are any further questions, those are our submissions.

MR PIKOLI: If we are to accept your conclusions, the biggest issue to deal with is the institutional culture, particularly if you are to look at the tension that exists between crime prevention methods and maintenance of order. The whole approach of *pragtigheid* with SAPS also being helpful to the community, do you want to say something about that?

MR BISHOP: Commissioner, perhaps Advocate Mayosi will address it. I just have a very short submission. I mean, this is the problem that was identified by Jonny Steinberg in his report, this sort of disjunction between these functions that the police are supposed to perform. The other submission is, it seems to me it is very difficult to sort of address the problem of institutional culture as a separate individual problem, we are going to try and solve institutional culture.

But if we address some of those issues, so issues are ensuring that the police treat people in a fair manner, are courteous and polite, that Advocate Mayosi spoke about; if we address the issues relating to crime intelligence and the focus on the use of intelligence rather than experience, those operational issues will change the culture over time.

And it seemed – the Commission referred us to a report with regard to the Los Angeles Police Department that had been under judicial supervision. And it seemed from my reading of that report that the recommendations are primarily operational-based, changing the way that performance was measured and so on. But that resulted in a real change in institutional culture. I don't know if Advocate Mayosi wants to say anything.

MS MAYOSI: I think it is a difficult issue to address, the problem of institutional culture. And to an extent I think Colonel Wiese spoke about the culture in SAPS. It seems to us that the solution in relation to changing the institutional culture of SAPS insofar as not seeing themselves in this sort of militarised function but rather a maintenance of order function, it seems to me that the solution should lie in the procedural justice model. Because SAPS needs to see themselves as the provider of a service and to have a rights-oriented culture.

And it would appear to me, because of the principles of the procedural justice model and the example that Mr McLean gave actually about how effective that was in Bogota where in a similar community such as Khayelitsha the military moved in because everything had broken down and the members of that unit then immersed themselves in the community, in relating with the community in a respectful way, in an affirming way, I think that's a project that will take a very, very long time.

It will take a generation arguably to really change the institutional culture of SAPS from a military organisation in to one that provides a

service. But the results of maintaining a militarised approach, I think it's too costly. I don't think SAPS actually has a choice but to adopt and to change the institutional culture that is required, that affirms communities, that really connects with communities and treats people in a manner which is in line with our constitutional values.

MR BISHOP: Sorry, if I can just add one more thing. There is a quote in the record, I can't remember who – it was from one of the SAPS officers, who says if you tell me how my performance is measured I will tell you how I perform. I think the performance chart and what the performance chart measures would have a massive impact on changes in institutional culture.

COMMISSIONER: Thank you. Mr Osborn?